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09/439,626	11/12/1999	JACQUES H. HELOT	109911266-1	1876

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/439,626
Filing Date: November 12, 1999
Appellant(s): HELOT ET AL.

James L. Baudino
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/28/06 appealing from the Office action mailed 10/25/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Fisher (US patent 6,331,858)

Taylor (non-patent literature).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 29-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher (US patent 6,331,858) in view of Taylor (non-patent literature).

Fisher shows all of the limitations of the claims except for specifying, in response to a user, clicklessly positioning a cursor over an icon and an audio preview.

Fisher shows, figures 3 and 5, a display terminal user interface. Items 301-303 are optional consumer items (also previously selected options). Frame F1 has fabric samples (options associated with consumer item). Frame F2 provides a representation/model and a real-time preview representation of the consumer item updated with option in response to clicking an option marker icon. Finish options depend on the previously selected option on which item was chosen. Each item has a set of valid finish options (prevent selection of an option based on a previous option). Cost (attribute data, updated and capable of being statistically analyzed) is provided for each item. Column 6, lines 12-15, recites that the server may check that the combination of object and fabric is valid (based on current configuration or "update") before returning the texture data to the plug-in application. If the combination is not valid (unavailable), then a message to this effect is returned for display on the terminal (indication).

Taylor teaches the use of JavaScript's image rollovers (clicklessly) as an option to clicking in order to change images and links "on the fly".

Based on the teaching of Taylor, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify to Fisher system to use an image rollover technique instead on clicking on an icon in order to change images and links "on the fly".

Fisher does not teach the step of providing an audio preview. However, sound effects are common in the art, and applicant's disclosure of "sounds associated with the various payment and shipping options (such as an airplane sound for shipping by air)" (p.16, lines 23-25) is also common in the ad. It would have been obvious to one of ordinary skill in the ad at the time the invention was made to employ the step of providing an audio preview with the invention of Fisher to provide a further indication of the option being selected.

(10) Response to Argument

The examiner would like to first point out the "adapted to" language of claims 29-35. See MPEP 2111.04 and 2106, section II C for guidance on this issue. Specifically,

"2111.04 [R-3] "Adapted to," "Adapted for," "Wherein," and "Whereby" Clauses Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure."

Appellant has not argued the method or the "mean for" claims separately and therefore has acquiesced that they stand or fall with apparatus claim 29. Based on the extremely broad language of claim 29 and the above authority to interpret the claims in this manner, the examiner should be affirmed in full. In the event the board chooses to treat the method separately, the examiner has mapped out (next page) claim 36 as opposed to claim 29. Claim 42 mirrors claim 36 with "means for" language. If the board is inclined to reverse the method claim, please address claims 29-35 separately from claims 36-48.

On pages 4 and 5 of appellant's brief, appellant does not make any specific assertions of error. There is a broad assertion that a *prima facie* case has not been made and not all the limitations have been shown. The examiner will rely on the final office action and the mapped out claim to show that a *prima facie* case has been made and that all the limitations have been shown.

On page 6 of appellant's brief, appellant asserts that the limitation "indicating to the user unavailability of at least one other option associated with the consumer item based on the update to the consumer item" is not shown. Appellant further asserts that Fisher is limited to providing only a single option and therefore, Fisher does not disclose or even suggest any other option depending on a selection of such fabric let alone the unavailability of any other option. The examiner does not concur. In reviewing the rejection the examiner regrets not being more clear about what was considered to be the "at least one other option". It is the texture data. The texture data is mapped one-to-one with the fabrics, but there are many of them and they are options. There are no limitations in the claim language that limit the other option from being dependent upon the original option. As far as indicating, there will be a message and there will be no 3D image (another form of indicating) because the texture data was not available.

Starting on the bottom of page 6 of appellant's brief, appellant asserts that the examiner was taking official notice. The examiner didn't take official notice so this is a moot point. The examiner was just trying to help appellant by anticipating an

amendment to get around the broad interpretation the examiner was taking by adding the "graying out" feature, which is how appellant accomplishes the "indicating".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Cuff

Michael Cuff 5/15/06

Conferees:

Alexander Kalinowski

Hyung Sough